

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CYNTHIA R. SMITH, )  
)  
)  
Plaintiff, )  
) Case No.:  
v. )  
) COMPLAINT AND DEMAND FOR JURY  
AUDUBON FINANCIAL BUREAU, LLC, ) TRIAL  
)  
) (Unlawful Debt Collection Practices)  
Defendant. )

**COMPLAINT**

CYNTHIA R. SMITH (“Plaintiff”), by her attorneys, KIMMEL & SILVERMAN, P.C.,  
alleges the following against AUDUBON FINANCIAL BUREAU, LLC (“Defendant”):

**INTRODUCTION**

1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices Act, 15  
U.S.C. § 1692 *et seq.* (“FDCPA”).

**JURISDICTION AND VENUE**

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states  
that such actions may be brought and heard before “any appropriate United States district court  
without regard to the amount in controversy;” and 28 U.S.C. § 1331 grants this court original  
jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business in the Commonwealth of Pennsylvania, therefore  
personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)( 2).

**PARTIES**

5. Plaintiff is a natural person who resides in Butler, Pennsylvania 16001.

6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

7. In the alternative, Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C. §1692k(a), and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

8. Upon information and belief, Audubon Financial Bureau, LLC is a limited liability company with its principal place of business located at 200 John James Audubon Parkway, Suite 301, Amherst, NY 14228.

9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

**FACTUAL ALLEGATIONS**

11. At all relevant times, Defendant was attempting to collect an alleged consumer debt from Plaintiff originating from a payday loan.

12. The alleged debt Defendant was seeking to collect arose from transactions, which were primarily for personal, family, or household purposes.

13. As Plaintiff has no business debt, the debt could have only been personal in nature.

14. By way of background, Plaintiff was making monthly payments on the alleged debt to Cash Web USA.

15. However, beginning on or about July 2, 2013, Defendant placed repeated, harassing telephone calls to Plaintiff’s cellular and work telephones seeking and demanding payment of the alleged debt.

1           16. Several of Defendant's debt collectors contacted Plaintiff, including a Matt Smith  
2 and Branna Johnson.

3           17. On July 3, 2013, Plaintiff received a voicemail message from Defendant  
4 threatening legal action if she did not call back.

5           18. Scared, Plaintiff returned Defendant's call and spoke with one of its collectors,  
6 who identified himself to Plaintiff as Matt Smith.

7           19. Mr. Smith demanded payment of an amount, greater than the amount of the  
8 alleged debt.

9           20. When she objected to paying the amount demanded, Mr. Smith deceptively  
10 claimed that he was finalizing the documentation in order to have her served with legal  
11 paperwork for the alleged debt.

12           21. Mr. Smith falsely stated that Defendant was going to bring legal action against  
13 her unless she immediately made payment on the phone.

14           22. Plaintiff refused to make payment to Defendant, explaining that she had been  
15 making payments to Cash Web.

16           23. When Plaintiff was transferred to another collector, the individual did not  
17 identify himself, started laughing at her, and demanded that she "just pay the debt" so she did  
18 not have to go to court.

19           24. It was upsetting to Plaintiff to be mocked by Defendant's collector, as she had  
20 been making regular monthly payments on the alleged debt.

21           25. Further, Defendant's collector claimed that Cash Web is a company of crooks,  
22 but that they will win and she will have to pay their legal fees.

23           26. In response, Plaintiff told Defendant to file what it wanted as she became worried  
24 that Defendant's company may not be a legitimate collection agency.  
25

1           27.     Then, on July 16, 2013, Defendant called Plaintiff and left another message  
2 claiming that its collector was from its legal department and was trying to resolve a  
3 “discrepancy.”

4           28.     Further, the message stated that Defendant’s collector realizes that “we all make  
5 mistakes” and that Plaintiff “must have forgotten to finish paying.”

6           29.     In addition to calling Plaintiff on her cellular telephone, Defendant also contacted  
7 Plaintiff at her place of employment.

8           30.     When doing so, Defendant spoke with several of Plaintiff’s co-workers, each  
9 time asking to speak with Plaintiff, advising that it was “personal,” and requesting updated  
10 “personal information” in order to reach Plaintiff.

11           31.     This was embarrassing to Plaintiff to receive collection calls at her place of  
12 employment, as individuals were aware that she was being contacted by a collection company as  
13 a result of its statements that it was calling about a “personal matter” and requesting location  
14 information.

15           32.     Additionally, at the time Defendant contacted Plaintiff’s place of employment, it  
16 had already spoken with her and had her valid contact information.

17           33.     Lastly, in its attempts to collect a debt, Defendant contacted Plaintiff’s parents’  
18 home telephone number.

19           34.     When calling Plaintiff’s parents, on at least six (6) occasions, Defendant left  
20 messages on their home answering machine threatening to take legal action against Plaintiff if  
21 she did not contact them at the end of the day.

22           35.     Upon information and belief, at no time did Defendant have the intent to take any  
23 legal action against Plaintiff when it threatened to do so but made the statements with the intent  
24 to frighten Plaintiff and her parents, as well as to coerce Plaintiff into paying a disputed debt.  
25

1           36. Further, Defendant could not take the action it threatened because, in  
2 Pennsylvania, the making of payday loans to residents is not authorized under Pennsylvania law  
3 and such lending violates the Consumer Discount Company Act, 7 P.S. § 6203.A and the Loan  
4 Interest and Protection Law, 41 P.S. § 201. .

5           37. It is averred that Defendant took the actions described herein with the intent to  
6 deceive, harass and intimidate Plaintiff into paying an alleged debt.

7                                   **DEFENDANT VIOLATED**  
8                                   **THE FAIR DEBT COLLECTION PRACTICES ACT**

9                                   **COUNT I**

10           38. Section 1692d of the FDCPA prohibits debt collectors from engaging in any  
11 conduct the natural consequence of which is to harass, oppress or abuse any person in connection  
12 with the collection of a debt.

13           39. Defendant violated § 1692d of the FDCPA when it called Plaintiff repeatedly  
14 demanding payment of a debt in which she was already making payments; when it laughed at  
15 Plaintiff; when it created a false sense of urgency to return its calls by threatening suit if she did  
16 not return the call; calling her place of employment and speaking with her co-workers; and when  
17 they engaged in other harassing or abusive conduct.

18                                   **COUNT II**

19           40. Section 1692e of the FDCPA prohibits debt collectors from using false,  
20 deceptive, or misleading representations or means in connection to the collection of any debt.

21           41. Section 1692e(2)(A) of the FDCPA prohibits debt collectors from  
22 misrepresenting that amount, character or status of a debt.

23           42. Section 1692e(5) of the FDCPA prohibits debt collectors from threatening to  
24 take any action that cannot legally be taken or that is not intended to be taken.  
25



- 1 c. All reasonable attorneys' fees, witness fees, court costs and other litigation  
2 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and  
3 d. Any other relief deemed appropriate by this Honorable Court.

4  
5 **DEMAND FOR JURY TRIAL**

6 PLEASE TAKE NOTICE that Plaintiff, CYNTHIA R. SMITH, demands a jury trial in  
7 this case.

8  
9 DATED: December 6, 2013

RESPECTFULLY SUBMITTED

10 KIMMEL & SILVERMAN, P.C.

11 By: /s/ Craig Thor Kimmel  
12 Craig Thor Kimmel  
13 Attorney ID # 57100  
14 Attorney for Plaintiff  
15 30 E. Butler Pike  
16 Ambler, PA 19002  
17 Phone: (215) 540-8888  
18 Fax: (877) 788-2864  
19 Email: kimmel@creditlaw.com  
20  
21  
22  
23  
24  
25